

Delaware Department of Agriculture
Pesticides Section, Enforcement
2320 South DuPont Highway
Dover, Delaware 19901
Enforcement Action/Violation

Respondent:

Sussex Tree, Inc.
20350 Nelson Drive
Bridgeville, Delaware 19933

Violations:

3 Del. C. § 1224(a)(1) – Making a pesticide recommendation or use or application inconsistent with the labeling, the E.P.A., or state registration for the pesticide, or in violation of the E.P.A. or state restrictions of the use of that pesticide.

3 Del. C. § 1224(c)(1) – Operating in a faulty, careless, or negligent manner.

Penalty:

Respondent signed a consent agreement September 23rd 2015. In the agreement, Respondent agreed to the imposition of disciplinary sanctions which included a civil penalty of \$1,750.00 (one thousand seven hundred fifty dollars) for violating §1224(a)(1) and §1224(c)(1) .

STIPULATED FACTS

1. Sussex Tree Inc. (“Respondent”) is a commercial pesticide applicator business with a mailing address of 20350 Nelson Drive, Bridgeville, Delaware 19933.
2. Jeff Meredith (“Meredith”) the owner/operator of Sussex Tree Inc. Jonathan Biegler (“Biegler”) is employed by the Respondent and is certified by the Department in Category 03, Ornamental & Turf number 15-204. Charity Williams (“Williams”) is employed by the Respondent and is certified by the Department in Category 03, Ornamental & Turf number 04-929. Josh Smith is a registered service employee with the Respondent.
3. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondent. James Hughes (“Hughes”) is employed as an Environmental Program Manager I with the Department. Christopher Wade (“Wade”) is employed as an Environmental Program Administrator with the Department.
4. On July 2nd, 2015, Wade received a phone call from Mr. Denis Lee. Mr. Lee called to report that pesticides being applied to his neighbor’s property had drifted onto his

vegetable garden. Mr. Lee stated that he had witnessed the spray drift from his neighbor's tree line onto his garden. Mr. Lee called Sussex Tree Inc. and spoke with Meredith. Meredith advised Mr. Lee that the pesticide was not systemic and that it would be okay if he washed off his plants prior to eating. After Mr. Lee notified them of the drift, the applicator provided Mr. Lee a MSDS sheet. Wade informed Mr. Lee that Hughes, the Sussex County inspector would follow up after the weekend.

5. On July 7th, 2015 Hughes arrived at Mr. Lee's residence to conduct the follow up investigation. Hughes issued a notice of inspection after showing Mr. Lee his credentials. Mr. Lee told Hughes his garden was organic and that he did not use pesticides or fertilizers. Mr. Lee expressed his concern over the fact that the insecticide use was systemic and was not labeled for use on many of the vegetables in his garden, but Meredith advised him the insecticide was not systemic.
6. On July 7th, 2015 Hughes took a vegetative sample from the garden area. One pound of vegetation was taken; and the sample consisted of several species of garden plants. This sample was given sample number SN162001.
7. On July 7th, 2015 Hughes arrived at the Sussex Tree Inc. office located at 20350 Nelson Drive, Bridgeville Delaware 19933. Upon arrival Hughes showed his credentials to Tanya Daly, an employee of Sussex Tree Inc. A notice of inspection was issued to Ms. Daly. Hughes received the application records for the tree line spray that had been completed on Mr. Lee's neighbor's property. Hughes also received a copy of the Acephate 97UP Insecticide label.
8. On July 7th, 2015 Hughes initiated contact with Sussex Tree Inc via phone and spoke with Charity Williams, an employee with Sussex Tree Inc. Williams stated that she had instructed the applicator (Biegler) to tell Mr. Lee to wash off his vegetable garden since it was only acephate and had no systemic properties.
9. On July 9th, 2015 the pesticide laboratory returned the results of the vegetative sample. The active ingredient acephate was detected on the GC/MSD. Acephate is the active ingredient of Acephate 97UP Insecticide. This is the product that was used on the tree line application.
10. The application record received by the Department recorded "Orthene EPA Reg# 545-AZ-1 as the only pesticide used. The record shows that the pesticide used was mixed at 1lb per 100 gallons. The record of application also showed that only bagworms were the target pest. Application record indicated that drift had occurred and that a MSDS sheet was given to neighbor (Mr. Lee) and that he was told to wash off garden "per Charity."
11. **Acephate 97UP Insecticide**, EPA Registration Number 70506-8, is registered for sale and use in the State of Delaware by the Department. The label of Acephate

97UP Insecticide states, in part:

- a. “ACEPHATE 97UP is an insecticide for control of pests on selected agricultural crops and in certain non-crop areas. The active ingredient in ACEPHATE 97UP is acephate, a water-soluble insecticide readily absorbed by plant roots and foliage to give systemic control of feeding insects.”
- b. “Do not allow this product to drift”
- c. “Ornamental Trees and Scrubs: Insects: Bagworms Amount of ACEPHATE 97UP PER 100 GALLONS – 0.25lb (4oz.

12. Delaware Pesticide Rules and Regulations, Section 14.0 establishes record keeping requirements for commercial applicators. Section 14.1.1 states in part “The brand name of the pesticide used.” The brand name for the application made to 18473 Josephs Road, Milton DE 19968 was ACEPHATE 97UP Insecticide. The pesticide record for this property had the box checked for “Orthene EPA REG# 545-AZ-1.”